

**UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD  
REGION 8**

**LABARGE BROS. CO., INC.**

**and**

**CASE NO. 8-CA-38119**

**LABORERS' LOCAL UNION NO. 639 a/w  
LABORERS' INTERNATIONAL UNION  
OF NORTH AMERICA**

**COMPLAINT AND NOTICE OF HEARING**

Laborers' Local Union No. 639, affiliated with Laborers' International Union of North America, herein called the Union, has charged that LaBarge Bros. Co., Inc., herein called Respondent, has been engaging in unfair labor practices as set forth in the National Labor Relations Act, 29 U.S.C. § 151 et seq., herein called the Act. Based thereon the General Counsel, by the undersigned, pursuant to Section 10(b) of the Act and Section 102.15 of the Rules and Regulations of the National Labor Relations Board, herein called the Board, issues this Complaint and Notice of Hearing and alleges as follows:

1. The charge in Case 8-CA-38119 was filed by the Union on January 14, 2009, and a copy was served by mail on Respondent on January 15, 2009.
2. At all material times Respondent, a New York corporation, with an office and place of business located in Syracuse, New York, is engaged in pipeline construction throughout the East Coast and Midwest of the United States.
3. Since about September 15, 2008 through November 2008, Respondent has been engaged in pipeline construction in Rinard Mills, Ohio.

4. Annually, Respondent, in conducting its business operations described above in Paragraphs 2 and 3, performs services valued in excess of \$50,000 in States other than the State of Ohio.

5. At all material times Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

6. Since at least 1999, and at all material times, Respondent has been a signatory to the Distribution Contractors Association National Master Agreement with the Laborers' International Union of North America. Distribution Contractors Association and Laborer' International Union of North America have been parties to successive collective bargaining agreements, the most recent of which is effective from June 1, 2006 through May 31, 2010, hereafter called the National Distribution Agreement.

7. Laborers' Local Union No. 639 is affiliated with Laborers' International Union of North America and the work of its members is covered by the National Distribution Agreement.

8. At all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

9. At all material times, the following individual has held the position set forth opposite his name and has been a supervisor of Respondent within the meaning of Section 2(11) of the Act and agent of Respondent within the meaning of Section 2(13) of the Act:

(b) (6), (b) (7)(C)

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(b) (6), (b) (7)(C)

10. A unit of Respondent's employees, herein called the Unit, constitutes a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All employees performing distribution pipeline and utility construction work, including other underground distribution facilities for public and private utilities (except sewer and water lines), but excluding all office clerical employees, professional employees, guard and supervisors as defined in the Act.

11. At all material times, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Unit.

12. (A) From about September 15, 2008 through about October 22, 2008, Respondent paid certain Unit employees who lived in and around the State of Ohio, in excess of the wage rate prescribed by the National Distribution Agreement.

(B) Over three successive payroll periods, from about October 22, 2008, through about November 30, 2008, Respondent unilaterally and without notice to the Union, announced its intention to recover the wage overpayments and made deductions of money from the paychecks of Unit employees in order to recover the alleged overpayment of wages as described above in paragraph 12(A).

(C) The subject set forth above in paragraph 12(B) relates to wages, hours and other terms and conditions of the Unit and is a mandatory subject for the purposes of collective bargaining.

(D) Respondent engaged in the conduct described above in paragraphs 12(A) through 12(C), without prior notice to the Union and without affording the Union an opportunity to bargain with Respondent over its intention to recover the wage overpayments and how it intended to correct its inadvertent overpayment of wages to unit employees and the effects of that action and/or without first bargaining with the Union to a good-faith impasse.

13. By the conduct described above in paragraph 12, Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

14. By the conduct described above in paragraph 12, Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees within the meaning of Section 8(d) of the Act in violation of Section 8(a)(1) and (5) of the Act.

15. The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

**WHEREFORE**, as part of the remedy for the unfair labor practices described in paragraph 12, the General Counsel seeks an order requiring Respondent to return all monies deducted from bargaining unit employees' paychecks as described above in paragraph 12(B), and, upon request from the Union, to bargain in good faith regarding its intention to recover the wage overpayments and the manner in which it intended to recover the overpayments. The General Counsel further seeks other relief as may be appropriate to remedy the unfair labor practices alleged.

#### **ANSWER REQUIREMENT**

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the complaint. The answer must be **received by this office on or before June 12, 2009, or postmarked on or before June 11, 2009**. Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

An answer may also be filed electronically by using the E-Filing system on the Agency's website. In order to file an answer electronically, access the Agency's website at <http://www.nlr.gov>, click on **E-Gov**, then click on the **E-Filing** link on the pull-down menu. Click on the "File Documents" button under "Regional, Subregional and Resident Offices" and

then follow the directions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. A failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Sections 102.21. If an answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer needs to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the complaint are true.

#### **NOTICE OF HEARING**

PLEASE TAKE NOTICE THAT on the 20<sup>th</sup> day of July 2009, at 1:00 p.m., in a court room of the Washington County Courthouse, 205 Putnam Street, Marietta, Ohio, and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this complaint. The procedures to be followed at the hearing are described in the attached Form

NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Dated at Cleveland, Ohio this 29<sup>th</sup> day of May 2009.

/s/ Frederick J. Calatrello

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Frederick J. Calatrello  
Regional Director  
National Labor Relations Board  
Region 8

Attachments

UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD

NOTICE

Case No. 8-CA-38119

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end. An agreement between the parties, approved by the Regional Director, would serve to cancel the hearing.

However, unless otherwise specifically ordered, the hearing will be held at the date, hour, and place indicated. Postponements ***will not be granted*** unless good and sufficient grounds are shown ***and*** the following requirements are met:

- (1) The request must be in writing. An original and two copies must be filed with the Regional Director when appropriate under 29 CFR 102.16(a) or with the Division of Judges when appropriate under 29 CFR 102.16(b).
- (2) Grounds thereafter must be set forth in ***detail***;
- (3) Alternative dates for any rescheduled hearing must be given;
- (4) The positions of all other parties must be ascertained in advance by the requesting party and set forth in the request; ***and***
- (5) Copies must be simultaneously served on all other parties (*listed below*), and that fact must be noted on the request.

Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing.

**(b) (6), (b) (7)(C)**  
LaBarge Bros. Co., Inc.  
5947 East Molloy Road  
Syracuse, NY 13211

Paul J. Cummings  
Blankenship & Associates  
P.O. Box 306  
Greenwood, IN 46142

Roger Leasure, Jr., President/Field Rep.  
Laborers' Local Union No. 639 a/w  
Laborers' Int'l. Union of North America  
227 Gilman Street, P. O. Box 360  
Marietta, OH 45750

Basil W. Mangano, Esq.  
2234 Warrensville Ctr. Rd. # 213  
Cleveland, OH 44118

Scott Hoge, Bus. Mgr./Sec./Treas.  
Laborers' Local Union No. 639 a/w  
Laborers' Int'l. Union of North America  
227 Gilman Street, P.O. Box 360  
Marietta, OH 45750

Administrative Law Judges  
1099 14<sup>th</sup> Street, N.W.  
Washington, D.C. 20570

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**AMENDMENT TO COMPLAINT**

A Complaint and Notice of Hearing having issued on May 29, 2009,

IT IS ORDERED, pursuant to Section 102.17 of the Board's Rules and Regulations that the above Complaint and Notice of Hearing is amended in the following respects:

Amend paragraph 1 to read as follows:

1. (A) The charge in Case 8-CA-38119 was filed by the Union on January 14, 2009, and a copy was served by mail on Respondent on January 15, 2009.

(B) An amended charge in Case No. 8-CA-38119 was filed by the Union on January 28, 2009, and a copy was served by mail on Respondent on January 29, 2009.

RESPONDENT IS FURTHER NOTIFIED THAT, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the Amendment to Complaint. The answer must be **received by this office on or before June 23, 2009, or postmarked on or before June 22, 2009.** Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

An answer may also be filed electronically by using the E-Filing system on the Agency's website. In order to file an answer electronically, access the Agency's website at



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Form NLRB-4338, Notice, and Form NLRB-4668, Summary of Standard Procedures in Formal Hearings Held Before the National Labor Relations Board in Unfair Labor Practice Proceeding Pursuant to Section 10 of the National Labor Relations Act, As Amended, are attached.

Dated at Cleveland, Ohio this 9<sup>th</sup> day of June 2009.

/s/ Frederick J. Calatrello

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Frederick J. Calatrello  
Regional Director  
National Labor Relations Board  
Region 8

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NOTICE

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